

Deficiency Progress Report - Update 5

Submitted by: 4-17-08

CUPA Name: Kern County Environmental Health

Evaluation Date: December 13 and 14, 2006

Next Progress Report (Update 6) Due: July 17, 2008

State Evaluation Team:

Cal/EPA Team Leader: Kareem Taylor

DTSC Evaluator: Mark Pear

OES Evaluator: Brian Abeel

SWRCB Evaluator: Sean Farrow

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Based on the CUPA's corrective action responses, the following deficiencies are considered corrected and no further updates are required:

1, 2, 3, 5, 6, 7, 8, 9

Please update any deficiencies that remain in progress.

Deficiencies and Corrective Actions

- 1. Deficiency:** The CUPA is not implementing their Fee Accountability Program in accordance with the law. The CUPA does not know approximately how much revenue it needs to collect adequate fees to cover the implementation costs of the Unified Program.

CUPA Corrective Action #1: Kern County Environmental Health Services Department provides for many programs (including CUPA). The Department manages its budget as a whole rather than operating multiple sub-budgets. See attached report for a breakdown of the CUPA portion of the Environmental Health Services Department budget.

Cal/EPA's 1st Response: The CUPA's corrective action and documentation are adequate to correct this deficiency.

- 2. Deficiency:** The CUPA is unable to document that all facilities that have received a notice to comply citing minor violations have returned to compliance within 30 days of notification.

CUPA Corrective Action #1: The CUPA staff has implemented the *Logging and Tracking Violations* feature of Envision by Decade Software within the FY06/07. This feature allows for businesses that have outstanding violations that have not been abated within the 30 day period,

to show up on the inspector's Field Inspection System (FIS) "To Do List". The intention of the CUPA is to perform re-inspections when self certifications are not received or significant violations are identified for all outstanding violations. In addition, CUPA staff will enter the complied on date in Envision to document the return to compliance date.

Cal/EPA's 1st Response: The CUPA is making good progress towards correcting this deficiency. Along with the next status report, submit to Cal/EPA the inspection reports from two Hazardous Waste Generator facilities that were cited for minor violations. Include documentation of return to compliance (RTC) by submitting either a re-inspection report or an owner/operator signed RTC form for both facilities.

CUPA Corrective Action #2: Currently, the CUPA has identified 264 facilities that require submittal of self certification forms or a reinspection to determine compliance with past violations. Enclosed with this package are two signed facility RTC forms and supporting compliance documentation as requested.

Cal/EPA's 2nd Response: Due to the corrective action update, Cal/EPA considers this deficiency corrected. DTSC was encouraged by the violation classification efforts of the CUPA as demonstrated in the two reports submitted.

3. **Deficiency:** A review of the summary reports show that not all tiered permitting facilities have been inspected at least every three years.

CUPA Corrective Action #1: Currently the program regulates 21 tiered permitting facilities. The tiered permitting facilities in each district have been identified and will be given the highest priority because of the activity being conducted at these businesses. A special effort to monitor the completion of the required number of inspections will be implemented.

Cal/EPA's 1st Response: The CUPA is making good progress towards correcting this deficiency. On the next status report, update Cal/EPA on the status of this deficiency.

CUPA Corrective Action #2: During the past fiscal year the CUPA completed inspections at all of the tiered permitted facilities regulated by the program. Additionally, the program has emphasized the need to inspect these types of facilities a minimum of once every three years as indicated in our Inspection and Enforcement Manual.

Cal/EPA's 2nd Response: Due to the corrective action update, Cal/EPA considers this deficiency corrected.

4. Deficiency: The CUPA is not inspecting UST facilities annually.

CUPA Corrective Action #1: It is the CUPA's goal to complete 100% of the mandated UST routine inspection beginning with the FY06/07. The program intends to meet this goal through program planning and hiring new staff. The program has doubled the number of UST inspections in the second quarter of FY06/07 versus the first quarter of FY06/07. This increase can be partially contributed to the change in program protocol to have an inspector at every UST annual monitoring certification conducting a concurrent routine inspection.

Cal/EPA's 1st Response: Immediately, please provide the total number of UST routine inspections conducted so far for FY 06/07 to Cal/EPA via email.

CUPA Corrective Action #2: During the fiscal year 06/07 the CUPA completed 194 UST inspections, representing about 65% of the required inspections completed. The CUPA has implemented a minor restructuring strategy in an effort to address the inspection deficiency across all of the programs. Unfortunately the program will be reduced by one staff member due to retirement of a key individual.

Cal/EPA's 2nd Response: Refer to SWRCB's response below.

SWRCB's response: CUPA will need to inspect 100% of its UST facilities annually. CUPA should structure its staff resources to provide adequate coverage for annual inspections. Please provide the number of inspections made in the next status report with projection for percentage of annual completion and the steps taken to assign staff to meet this priority.

CUPA's 3rd Status Update: As a result of our restructuring efforts and emphasis to complete 100% of the required annual UST inspections the program has completed approximately 23% of the required inspections for the entire fiscal year 07/08. A total of 70 UST inspections were completed between July 1, 2007 and September 30, 2007. Based on this quarter's results the program appears to be on schedule to complete all of the required UST inspections for the current fiscal period. The minor lapse in completing 25% can perhaps be attributed to staff vacations during the summer months, contractors rescheduling facility monitoring certification testing, or our internal schedule designed to conduct the majority of our inspections in the latter part of the fiscal year.

Cal/EPA's 3rd Response: The CUPA is making good progress towards correcting this deficiency. On the next progress report, please provide the total number of routine inspections performed for FY 07/08.

CUPA's 4th Status Update: The CUPA has completed 146 routine UST inspections, which represent 47% of the required inspections for the fiscal period 07/08.

Cal/EPA's 4th Response: The CUPA is making good progress towards correcting this deficiency. On the next progress report, please provide the total number of routine inspections performed for FY 07/08.

CUPA's 5th Status Update: The CUPA has completed 222 or 74% of the required UST inspections by the end of March 2008. We expect to complete 100% of the required inspections by the end of June 2008.

Cal/EPA's 5th Response: Refer to SWRCB's response.

- **SWRCB's Response:** The CUPA is making good progress towards correcting this deficiency. On the next progress report, please provide the total number of routine inspections performed for FY 07/08.

CUPA's 6th Status Update: Enter update here

5. **Deficiency:** The CUPA is allowing UST facilities to operate with expired operating permits.

CUPA Corrective Action #1: UST facilities were issued permits that will expire in 2011 which meets the regulatory requirement of renewal every five years. The CUPA's program goal is to meet the inspection requirements each year and issue UST permits in accordance with the regulatory time frames

Cal/EPA's 1st Response: Refer to SWRCB response below.

SWRCB Wrote: Maintaining a 5 year term for UST permits is adequate progress towards correcting this deficiency; however, compliance (through the inspection process) must be met in order for a new UST permit to be issued. If inspections are not performed, permits issued will not be valid.

CUPA Corrective Action #2: It is the CUPA's goal to complete all of the required UST inspections within fiscal year 07/08. Initial priority will be given to those facilities not inspected within FY 06/07.

Cal/EPA's 2nd Response: Refer to SWRCB's response below.

SWRCB's response: In concert with deficiency #4, when the CUPA inspects all of the UST facilities annually all of the UST permits will be valid.

CUPA's 3rd Status Update: Based on the CUPA's current inspection rate it appears we are on track to complete 100% of the required annual UST inspections.

Cal/EPA's 3rd Response: Has the CUPA come across any noncompliant UST facilities? If so, then were the permits for those facilities revoked or were there other enforcement actions implemented?

CUPA's 4th Status Update: The CUPA has initiated or completed administrative enforcement action against 13 facilities and referred 2 to the District Attorney's office for prosecution. We have collected approximately \$11,000, and negotiating on assessment of \$45,000, more in penalties. The program is also planning a UST workshop in February 2008, which will include an enforcement presentation. The CUPA is on schedule to complete 100% of the required annual UST inspections.

Cal/EPA's 4th Response: Due to the corrective action update, Cal/EPA considers this deficiency corrected.

6. **Deficiency:** UST facility files reviewed either lacked plot plans, or the plot plans did not contain all the required elements. The plot plans were missing the location of ATG, sump, UDC, monitoring panel, and/or sensor.

CUPA Corrective Action #1: The UST construction and modification permit requires plans and as-builts showing the location of equipment to be installed. Prior to each annual inspection staff are required to review the facility plan and determine compliance with existing site auxiliary equipment during the inspection. If a plot plan does not exist the owner is required to submit one within 30 days. The plot plan submitted with the annual monitoring certification will also be reviewed for accuracy and utilized to meet this requirement.

Cal/EPA's 1st Response: The use of plans and as-builts that contain plot plan information are adequate to correct this deficiency. The plans and as-builts should be readily available to the CUPA for review.

7. **Deficiency:** File research indicated that there have been numerous notices of violations for UST facilities that have not been followed up on or corrected.

For example: Fire Station 32 and 71

CUPA Corrective Action #1: The goal of the program is to identify all outstanding violations and to bring those facilities into compliance. Program planning and increased staffing levels will enable the program to better achieve this goal. The program has also initiated an expedited administrative enforcement order process in an effort to bring recalcitrant violators into compliance. The Director has been in contact with County Fire to resolve the issue of out of compliance fire stations.

Cal/EPA's 1st Response: On the next status report, discuss the progress the CUPA has made towards fire station RTC. Submit to Cal/EPA via email any documentation from fire stations that exhibits RTC (i.e. inspection reports, notice of violation, re-inspection reports, and/or owner/operator signed certification of RTC).

CUPA Corrective Action #2: The department received a plan from the County Administrative Office (CAO) to address the nine out of compliance underground storage tank fire station facilities. The plan includes removing some, retrofit to current standards, and remove and replace with aboveground storage tanks. All of the required actions are scheduled to be completed by January 15, 2008. The five fire stations planned to be retrofitted to meet current standards have been inspected within the past 14 months, but have not returned to compliance. The UST's at four fire stations will have been removed by the end of July 2007. Included with this response is a copy of the county's plan to address their fire station return to compliance issues.

The CUPA is prepared to begin implementation of our expedited enforcement plan initiative to address outstanding underground storage tank facility violations. The program has completed their fee matrix and is in the process of identifying those facilities with significant violations in order to begin the enforcement process.

Cal/EPA's 2nd Response: Refer to SWRCB's response below.

SWRCB's response: The CUPA is making good progress towards the resolution of this deficiency with its expedited enforcement plan initiative to address outstanding underground storage tank facility violations. Once the program is in place and operational with enforcement being taken for violations this deficiency can be considered corrected.

The SWRCB would like to see the inspection reports as a follow up to the response of the county's plan to address their fire stations return to compliance issues in the CUPA's next status report.

The SWRCB would like to see some of the enforcement actions taken as a result of the expedited enforcement plan initiative to address outstanding underground storage tank facility violations and the fee matrix with the process of identifying those facilities with significant violations in order to begin the enforcement process. Please include enforcement documentation on the next status report.

CUPA's 3rd Status Update: The CUPA has executed six Administrative Enforcement Order in the past quarter and is considering the issuance of two others. During the quarter two sites were referred to the District Attorney's office for civil enforcement. Enclosed are requested AEO documents for a recent enforcement case completed and penalties collected. The fee matrix used for determination of UST penalties being provided is part of our AEO penalty matrix used for various CUPA elements.

Enclosed are recent inspections reports for inspections completed at fire stations. The CUPA has received plans for upgrading some of the Fire Department stations in response to inspection violations identified over the past couple of months.

Cal/EPA's 3rd Response: The CUPA submitted AEO documents for a recently settled enforcement case and routine inspection reports for 5 fire stations in Kern County. The CUPA is making good progress towards correction of this deficiency. Along with the next status report, submit follow-up documentation (i.e. re-inspection reports, signed certification of RTC, enforcement action documents) for the 5 fire station inspection reports submitted with the 2nd status report.

CUPA's 4th Status Update: All five fire stations have received permits for retrofitting their facility to meet current standards. One station has completed all modifications and is scheduled to receive a final inspection. The other four stations are in various phases of completing their upgrades. The bulk of modifications include new piping, under dispenser containment, sumps, and new monitoring systems.

Enclosed are modification permits for the five fire stations.

Cal/EPA's 4th Response: Due to the corrective action update, Cal/EPA considers this deficiency corrected.

8. **Deficiency:** The CUPA has not established a CalARP dispute resolution procedure. The only dispute processes found in the CUPA SOPs were Hazardous Waste Generator/Tiered Permitting Inspections & Fee Dispute.

CUPA Corrective Action #1: The Kern County CUPA has formulated and adopted a Resolution Procedure. See the attached policy addressing this issue.

Cal/EPA's 1st Response: Refer to OES response below.

OES Wrote: OES considers this deficiency a correction in progress. The CalARP Dispute Procedure "4. Appeal of the Decision" is incomplete; the notice of appeal shall be accompanied by a copy of the decision of the AA too. Include this item in the procedure as required accompanied material. In the next status report, please provide Cal/EPA with an updated CalARP Dispute Resolution Procedure.

CUPA Corrective Action #2: A revised Cal ARP Dispute Resolution Procedure is included with this package. The revision includes a procedure for submitting the decision of the AA to the Director of the Office of Emergency Services (OES).

Cal/EPA's 2nd Response: Due to the corrective action update, Cal/EPA considers this deficiency corrected.

9. **Deficiency:** The CUPA has not met the inspection frequency for the CalARP Program. The CUPA is not inspecting all stationary sources once every three years as required by law.

CUPA Corrective Action #1: The program recognizes the extensive time expenditure required to meet the inspection frequency. The CalARP program has conducted 32 of 60 required routine inspections during the FY06/07. The CUPA will inspect 60 CalARP facilities (33% of the total CalARP inventory) by December 14, 2007. Thereafter, the CUPA will inspect 33% of the stationary sources by the end of each fiscal year. The program experienced a loss in personnel at the beginning of the fiscal year but a replacement staff member has been trained and should be able to make up the loss in inspection time. The CUPA is evaluating the need to allocate additional personnel to the CalARP program.

Cal/EPA's 1st Response: Refer to OES response below.

OES Wrote: OES considers this deficiency a correction in progress. In the next status report, please continue to update Cal/EPA on the status of this deficiency, including the total number of regulated CalARP facilities, inspection goals for your inspectors and the actual number of CalARP facilities inspected for the fiscal year 2006-2007.

CUPA Corrective Action #2: The CUPA program regulates approximately 180 Cal ARP facilities. The program completed 63 Cal

ARP inspections within the fiscal period 06/07. The goal of the Cal ARP program is to complete approximately the same number of inspections during the fiscal year 07/08, in order to maintain our three year schedule.

Cal/EPA's 2nd Response: Due to the corrective action update, Cal/EPA considers this deficiency corrected.